

ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)

Amendment of the Commission's Rules)
to Permit Flexible Service Offerings)
in the Commercial Mobile Radio)
Services)

WT Docket No. 96

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Federal Communications Commission
Office of Secretary

To: The Commission

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COMMENTS OF COMMNET CELLULAR INC.

CommNet Cellular Inc. ("CommNet") by its attorneys and pursuant to Section 1.415 of the Rules, hereby submits its comments in response to the Commission's First Report and Order and Further Notice of Proposed Rulemaking, FCC 96-283, released August 1, 1996 in the captioned proceeding. In support hereof, the following is shown:

Statement of Interest

1. CommNet is a publicly-traded corporation organized under the laws of the State of Colorado. CommNet and its subsidiaries have cellular ownership interests in ten states. CommNet has non-controlling ownership interests in certain cellular licensees. For certain of the licensees in which it has non-controlling ownership interests, CommNet performs system management functions under the overall direction, supervision and control of those licensees. In other cases, wholly-owned subsidiaries of CommNet are cellular licensees or have controlling interests in cellular licensees. Cellular systems in which CommNet has an ownership interest provide fixed-point service under Section 22.323 of the Rules. Therefore,

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CommNet has an interest in any Commission action addressing the provision of fixed services by Commercial Mobile Radio Service ("CMRS") licensees.

Argument

2. CommNet commends the Commission for its recent action allowing CMRS licensees to offer fixed services on a co-primary basis with mobile services. While this is a significant step forward, CommNet respectfully urges the Commission to take the next step towards the development of truly competitive markets and extend its blanket preemption of state rate and entry regulation to the provision of fixed services.

3. CommNet believes that compelling reasons exist to regulate fixed services offered over CMRS spectrum in the same manner as CMRS mobile services. In CommNet's opinion, the Commission's proposal to resolve regulatory treatment issues on a case-by-case basis, through use of a rebuttable presumption, would threaten the development of competitive commercial wireless services. While CommNet recognizes the Commission's duty to ensure the provision of telecommunications services universally at reasonable costs, a case-by-case approach will result in unnecessary state-imposed restrictions, delay the implementation of new fixed service offerings, and limit the ability of CMRS licensees to introduce new and efficient service offerings. By establishing a procedure under which wireless providers would be required to defend the presumption that their services should remain unregulated, the public could be denied telecommunications offerings that otherwise would be

available due to uncertainty on the part of the CMRS licensees as to how the service offerings will be treated for regulatory purposes.

4. CommNet makes this assertion based upon its experience in working with state regulatory bodies in the nine-state area in which CommNet manages cellular system operations. CommNet has been active in protecting the regulatory status of CMRS in response to state efforts to extend their jurisdiction over CMRS applications as defined under current federal law. While CommNet believes the law is clear in preempting state rate and entry regulation of CMRS, it has been CommNet's experience that some state regulators wish to bring CMRS under their jurisdiction. As a result of these experiences, CommNet believes that the proposal to employ a case-by-case approach to determining the regulatory status of fixed services, rather than a full and complete preemption of state rate and entry regulation, will leave states with the loophole they need to fully regulate fixed -- and potentially mobile -- wireless service.

5. CommNet believes the proposal to employ a case-by-case approach to determining the regulatory status of fixed services offered by CMRS licensees would be shortsighted. The future potential for wireless communications applications will no doubt go far beyond the applications currently available. The notion of being able to pigeonhole wireless communications as either fixed or mobile does not conform with how these future applications will develop in the marketplace. While current technology may lend

itself to these artificial regulatory classifications, the time when an essentially seamless system of wireless and landline infrastructure and services exists may not be far away. In fact, the telecommunications industry is already seeing single number access where a caller does not know the location or the technology that the called party is using. If, under the Commission's new rules, a wireless provider could deliver a single-number call to either a mobile or a fixed location, there is no compelling public interest reason for state rate or entry regulation of either one of these services. By requiring the CMRS carrier to defend itself against attempts at state regulation, CommNet foresees many potential difficulties that will retard the rollout of fixed services.

6. In the above-cited example, CommNet questions how states would confine their regulatory authority only to rate and entry regulation of the fixed services offered by the CMRS carrier. If challenges to the CMRS regulatory preemption were made based upon such factors as the relative mobility of the service, the package of services being offered, the service area covered, the types of traffic being carried over the facilities and other conditions, there would be great difficulty determining where the line of demarcation exists separating fixed from mobile services. These difficulties in determining the demarcation point could, for example, produce inconsistent decisions, and would, in any event, make the case-by-case approach extremely difficult to efficiently and effectively administer. For example, if a fixed agricultural

service were relocated on a seasonal or daily basis (or some period in between), the opportunities for subjective analysis inherent to the case-by-case approach would risk the provision of such service. If a wireless local loop application permitted the handsets to be used as mobile devices, the industry would be subjected to the risk of having the entire packaged of services (i.e., both fixed and mobile) subjected to state regulation. CommNet believes that the implications of having to defend the regulatory status of a particular service (or package of services) on a case-by-case basis would only result in a delay in the introduction of new competitive services, with no countervailing public interest benefits.

7. CommNet acknowledges that some limited state regulation of fixed wireless service may be necessary in connection with the administration of any state universal service funds in those limited circumstances where the service is provided to meet universal service obligations, if universal service obligations are extended to wireless carriers. Where opportunities exist in high cost areas for wireless providers to serve as a costly extension of the landline system, state universal service regulations may apply. However, regulations implementing a state universal service plan can stand separate and apart from traditional rate and entry regulation of CMRS fixed services, which regulation should be expressly disallowed. Because subscribers to CMRS fixed service would likely be connected to the nationwide wireless networks and, therefore, also have the opportunity to use the service for mobile applications, CMRS fixed service should

receive the same regulatory treatment as mobile service.

8. At a time when the competitive market is evolving and states are being required to move in the direction of deregulation in response to the Telecommunications Act of 1996, CommNet urges the Commission to refrain from opening the door to unnecessary constraints on the competitive wireless environment. CommNet believes that the attempt to draw artificial regulatory boundaries around particular wireless applications fails to leave adequate room for advances in technology, would result in extreme delays in offering new services to the public, and would result in higher costs being passed on to the public.

Respectfully submitted,

Blooston, Mordkofsky,
Jackson & Dickens
2120 L Street, N.W.
Washington, D.C. 20037
Tel: (202)659-0830

CommNet Cellular Inc.

By: 

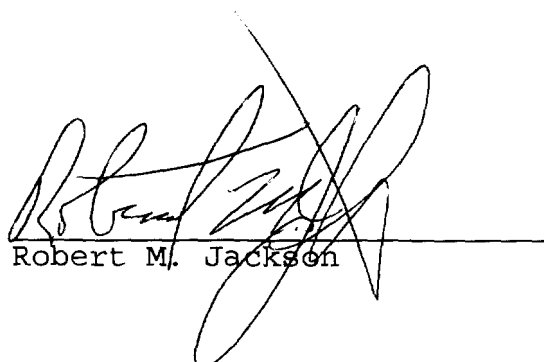
Robert M. Jackson
Its Attorney

Dated: November 26, 1996

Certificate of Service

I hereby certify that I am an attorney with the law offices of Blooston, Mordkofsky, Jackson & Dickens, and that on this 26th day of November, 1996, I caused a copy of the foregoing **"Comments of CommNet Cellular Inc."** to be hand delivered to the following:

International Transcription Services, Inc.
2100 M Street, N.W., Suite 140
Washington, D.C. 20037



Robert M. Jackson